

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

YONATHAN HERNANDEZ & CUBERTO
CARRASCO-GONZALEZ,

Case No. 3:20-cv-00628-LRH-CSD

Plaintiff,

ORDER

v.

FRANCO AMERICAN BAKING
COMPANY,

Defendant.

Before the Court is Defendant Franco American Baking Company's ("Franco American") motion for certification of final judgment as to Plaintiff Cuberto Carrasco-Gonzalez' ("Carrasco-Gonzalez") claims under FED. R. CIV. P. 54(b) (ECF No. 60). Carrasco-Gonzalez filed a response (ECF No. 61) to which Franco American replied (ECF No. 62).¹ Carrasco-Gonzalez also filed a motion for leave to supplement his response (ECF No. 63). Franco American filed an opposition to the motion (ECF No. 65) to which Carrasco-Gonzalez replied (ECF No. 66). For the reasons articulated below, the Court will grant Franco American's motion for certification of final judgment and deny Carrasco-Gonzalez' motion for leave to supplement his response.

¹ In its reply, Franco American seeks to strike aspects of Carrasco-Gonzalez' response under FED. R. CIV. P. 12(f) because of "inflammatory, scandalous, disparaging, and untrue statements regarding Mr. Tim Gant, the Defendant's president." ECF No. 62 at 5. Carrasco-Gonzalez presents similar allegations regarding Tim Gant in his motion for leave to supplement his response. The Court does not find that new factual allegations concerning Tim Gant, however inflammatory, are relevant to the resolution of the instant motion for entry of final judgment as they pertain only to this Court's dismissal of Carrasco-Gonzalez' claims and not Hernandez' claims. Therefore, the Court will deny Franco American's request to strike aspects of Carrasco-Gonzalez' response and will deny Carrasco-Gonzalez' motion for leave to supplement its response.

1 **I. BACKGROUND**

2 After receiving evidence that Carrasco-Gonzalez offered money to his coworkers for
 3 favorable testimony, Franco American filed its initial motion for sanctions against both Yonathan
 4 Hernandez (“Hernandez”) and Carrasco-Gonzalez on May 12, 2021 seeking dismissal of their
 5 claims. ECF No. 24. The Magistrate Judge (“Judge Cobb”) denied the motion with prejudice as to
 6 Hernandez but without prejudice as to Carrasco-Gonzalez. ECF No. 32. Depositions were taken
 7 between July 7, 2021 and July 22, 2021 and Franco American filed its renewed motion for
 8 sanctions on August 6, 2021. ECF No. 38. On August 31, 2021, Judge Cobb held an evidentiary
 9 hearing on the matter and heard testimony from various witnesses regarding the alleged
 10 sanctionable conduct. ECF No. 48. Notably, Carrasco-Gonzalez failed to appear at the hearing. *Id.*
 11 On September 3, 2021, Judge Cobb issued a report and recommendation with the conclusion that
 12 the motion for sanctions be granted and that Carrasco-Gonzalez’ claims be dismissed with
 13 prejudice. ECF No. 49. In the report and recommendation, Judge Cobb found that “...three
 14 witnesses unequivocally stated in declarations/affidavits, deposition testimony and at the
 15 evidentiary hearing that Carrasco-Gonzalez offered them money in exchange for testimony against
 16 Franco-American.” *Id.* at 10. On September 15, 2021, Carrasco-Gonzalez filed objections to the
 17 report and recommendation (ECF No. 50), and on December 21, 2021, this Court overruled the
 18 objections and adopted and accepted the report and recommendation. ECF No. 54.

19 Now, following that order, Franco American moves this Court for certification of final
 20 judgment as to Carrasco-Gonzalez’ claims set forth in his second amended complaint.

21 **II. DISCUSSION**

22 Federal Rule of Civil Procedure 54(b) permits district courts to “direct entry of a final
 23 judgment as to one or more, but fewer than all, claims or parties” prior to the final disposition of
 24 all claims against all parties. Judgment under this rule is appropriate where there are distinct and
 25 severable claims and where immediate review of the adjudicated claims will not result in later
 26 duplicative proceedings at the trial or appellate level. *Wood v. GCC Bend, LLC*, 422 F.3d 873,
 27 878–89 (9th Cir. 2005). Conversely, partial judgment under Rule 54(b) is inappropriate in routine
 28 cases where the risk of “multiplying the number of proceedings and of overcrowding the appellate

1 docket" outweighs "pressing needs . . . for an early judgment." *Morrison-Knudsen Co. v. Archer*,
 2 655 F.2d 962, 965 (9th Cir. 1981). "A similarity of legal or factual issues will weigh heavily against
 3 entry of judgment under the rule, and in such cases, a Rule 54(b) order will be proper only where
 4 necessary to avoid a harsh and unjust result . . ." *Id.*

5 An entry of final judgment is warranted in this case. Franco American's motion for
 6 sanctions and this Court's subsequent order raised sufficiently factually dissimilar issues than
 7 those contained within Hernandez' claims. Specifically, Judge Cobb found, following an
 8 evidentiary hearing, that it was "more likely true than not true that Carrasco-Gonzalez offered [his
 9 coworkers] money in exchange for favorable testimony against Franco American." ECF No. 54 at
 10 9. The appropriate remedy for such improper actions was to dismiss Carrasco-Gonzalez' claims
 11 with prejudice. *See Anheuser-Busch, Inv. v. Natural Beverage Distribs.*, 69 F.3d 337, 348 (9th Cir.
 12 1995) (describing the five factors a district court must weigh before imposing the harsh sanction
 13 of dismissal.). Any potential legal and factual issues related to the sanctionable conduct and
 14 dismissal have no bearing on Hernandez' claims in this case and therefore will not create the risk
 15 of "multiplying the number of proceedings and of overcrowding the appellate docket..."
 16 *Morrison-Knudsen Co v. Archer*, 655 F.3d at 965. Accordingly, the Court will grant Franco
 17 American's motion for entry of final judgment.

18 **III. CONCLUSION**

19 IT IS THEREFORE ORDERED that Franco American's motion for entry of final
 20 judgment under FRCP 54(b) (ECF No. 60) is **GRANTED**. The Clerk of Court shall enter judgment
 21 in favor of Franco American in this matter as to Carrasco-Gonzalez. This Court finds, for purposes
 22 of Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay.

23 IT IS FURTHER ORDERED that Carrasco-Gonzalez' motion for leave of court to
 24 supplement (ECF No. 63) is **DENIED**.

25 IT IS SO ORDERED.

26 DATED this 21st day of June, 2022.

27 
 28 LARRY R. HICKS
 UNITED STATES DISTRICT JUDGE